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Attorney's Docket: 2002DE442
Serial No.: 10/537,556
Art Unit 1621
Response to Office Action of 1/12/2007

REMARKS/ARGUMENTS

The Office Action mailed October 13, 2006 has been carefully considered together with each of the references cited therein. The amendments and remarks presented herein are believed to be fully responsive to the Office Action. Accordingly, reconsideration of the present Application in view of the following remarks is respectfully requested.

Applicant has amended the Application to attend to housekeeping matters and to more clearly describe the invention. Claims 1, 8 and 9 were amended to place claims 8 and 9 in condition for allowance. In claims 1 and 8, R₂ and R₃ were amended to recite a C₁-C₂₂-alkyl or C₂-C₂₂-alkenyl, and R₄ was amended to recite a group of formula -A-(OA)_n-OH, and in claim 8, the amended elements of claim 1 were imported into claim 8. In claim 9, the dependency was amended to recite claim 8. Claim 7 was canceled. Support for the amendments to claims 1, 8 and 9 may be found in Applicant's Specification and in original claims 1, 8 and 9. It is not believed that any new matter was introduced by these amendments, and that no additional search is required by the office.

Claims 1-7 were rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,414,124). The rejection of claim 1 as amended under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,414,124) should be withdrawn for the reason that Smith et al. teaches away from the instant invention, and Smith et al. is at best silent on any non-ionic solvents claimed in the instant invention and Smith does not disclose component a) of the instant invention. Furthermore, no one skilled in the art would be motivated by the disclosure of Smith et al. to select any of Applicant's solvents based on the limited disclosure of Smith et al. which are ethylene glycols and propylene glycols, and not the alcohols or polyglycols as recited in Applicant's claim 1. The critical difference between the instant invention and Smith is that the instant invention employs a hydroxyethyl substituent -A-(OA)_n-OH and the Smith reference does not teach or disclose such a substituent. Smith et al. is directed to the discovery that a particular group of quaternary ammonium compounds which are insoluble in water and ethylene glycol and propylene glycol

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Serial No.: 10/537,556

Art Unit 1621

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are soluble in combinations of water and alkylene glycol. An alkylene glycol is of the formula



Applicant's invention employs a non-ionic solvent which as recited in claim 1 as amended is an alcohol or an ethoxylated alcohol with the general formula $R-O-(AO)_nH$, where R is alkyl or alkenyl group containing 8 to 22 carbon atoms, A is C_2H_4 or C_3H_6 and mixtures thereof, and n is a number from 0 to 20, nonylphenol or ethoxylated nonylphenol with the general formula $C_9H_{19}-phenyl-O-(AO)_nH$, where A and n are as defined above, and mixtures thereof. Nowhere in Applicant's claim 1 is an alkylene glycol; that is, where R is hydrogen recited.

The Examiner has failed to make a prima facie case of obviousness. And no one skilled in the art would be motivated based solely on the disclosure of the highly hydrophilic alkylene glycols of Smith et al. to select Applicant's quaternary ammonium compound or the more hydrophobic non-ionic alcohols and alkoxylation fatty alcohols or alkylphenols of the instant invention. One skilled in the art, reading Smith et al. would be directed away from the hydrophobic non-ionic solvents of the instant invention. Prior art references must be read as a whole and consideration must be given where the reference diverges and teaches away from the claimed invention. Proceeding contrary to accepted wisdom is strong evidence of non-obviousness. Therefore, the rejection of claim 1 under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,414,124) should be withdrawn for the reason that Smith et al. teaches away from the instant invention and no one skilled in the art would be motivated to select any of Applicant's non-ionic solvents from the disclosure of Smith et al.

The rejection of claims 2 - 6 under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 5,414,124) should be withdrawn for the reasons given in support of claim 1 from which they depend.

The examiner has indicated that claims 8 – 15 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any

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Art Unit 1621
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intervening claims. Applicant has amended claim 8 to include all of the limitations of amended claim 1. Therefore, the objection to claims 8-15 should be withdrawn.

It is respectfully submitted that, in view of the above remarks, the objections and rejections under 35 U.S.C. §103 should be withdrawn and that this application is in a condition for an allowance of all pending claims. Accordingly, favorable reconsideration and an allowance of all pending claims are courteously solicited.

An early and favorable action is courteously solicited.

Respectfully submitted,



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